


**Government of the District of Columbia  
Office of the Chief Financial Officer**



**Natwar M. Gandhi**  
Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Vincent C. Gray  
Chairman, Council of the District of Columbia

**FROM:** Natwar M. Gandhi   
Chief Financial Officer

**DATE:** February 13, 2009

**SUBJECT:** Addendum to the Fiscal Impact Statement issued January 7, 2009 –  
“Transportation Infrastructure Improvements Bond Financing Act of  
2009”

**REFERENCE:** Introduced legislation

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**Preamble**

This document provides additional information on the conditions under which Grant Anticipation Revenue Vehicles (“GARVEE” bonds), authorized by the proposed legislation, may count toward the District’s 12 percent debt service cap contained in DC Act 17-0675 Limitation on Borrowing and Establishment of the Operating Cash Reserve Act of 2008 (“Borrowing Limitation Act “)<sup>1</sup>, depending on the structure of, and revenue source(s) used to repay and/or guarantee, a particular GARVEE bond issue.

This addendum does not change the conclusion that funds are sufficient to implement the proposed legislation in the FY 2009 to FY 2012 budget and financial plan period. It only elaborates on the statement in the Fiscal Impact Statement Issued on January 7, 2009, that GARVEE bonds (which are primarily structured to be repaid through future federal appropriations) would not be included in the definition of “District bonds” in the Borrowing Limitation Act and would, therefore, not count towards the District’s 12 percent debt cap.

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<sup>1</sup> Enacted January 16, 2009, with projected Congressional Review completion on March 26, 2009.

## **Background**

The proposed legislation would allow the District of Columbia to issue GARVEE bonds against future Federal-aid highway apportionments to finance essential transportation-related projects. The proceeds from such bonds would be deposited into the Transportation Infrastructure Improvement Fund, a newly created non-lapsing fund that is separate from the general fund.

## **Impact on the 12 Percent Debt Service Cap**

The Borrowing Limitation Act applies to general obligation bonds, Treasury capital-project loans, tax-supported revenue bonds and notes (including TIFs and PILOTs), certificates of participation, and lease-purchase financing bonds.

Section 9 of the proposed legislation states that the GARVEE bonds shall not be general obligations of the District of Columbia, and would "...[n]ot be a pledge of or involve the faith and credit or the taxing power of the District, shall not constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act." However, language in other sections of the proposed legislation authorizes use of other District funding sources, including local funds in the event Federal Highway Administration ("FHWA") payments are insufficient. Given this language, it is important to point five conditions under which the GARVEE bonds may partially count towards the 12 percent debt service cap:

1. Section 2 (13) of the proposed legislation defines the GARVEE Revenues available to pay debt service on GARVEE bonds to include "...[f]unds derived from the Federal Highway Administration and other investments, gifts, grants, contributions, appropriations, income and any other amounts pledged to secure payment of GARVEE Bonds." Given this definition, one cannot determine the applicability of the Borrowing Limitation Act until one has determined the structure of, and revenue source to repay or guarantee a particular GARVEE bond issue, or do both. To the extent that other sources include District tax revenues, the Borrowing Limitation Act may apply.
2. No federal guarantee exists for the GARVEE Bonds or of future FHWA payments or appropriations for those payments. Thus, unless the GARVEE bonds are issued as revenue bonds with no recourse to the District,<sup>2</sup> or unless the District purchases bond insurance, there will be some form of a "back-stop" District obligation to repay the GARVEE bonds. Depending on the nature of the District obligation, the Borrowing Limitation Act may apply.
3. The GARVEE program contemplates that the District will contribute a portion of the project costs, often by paying a portion of the debt service on the GARVEE bonds. Thus,

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<sup>2</sup> If the District issues GARVEE bonds with no recourse to the District, the uncertainty of receipt of the FHWA payments would increase the interest rate. This risk is not insubstantial because, in 2008, due to decreased gasoline tax revenues, the FHWA reduced payments to the states.

if there is a single GARVEE bond issue payable both from FHWA funds and District funds, depending on the pledged source of District funds, the GARVEE Bonds, or a portion thereof, may be subject to the Borrowing Limitation Act.

4. Some issuers have divided GARVEE bonds into a Federal repayment series of bonds and a local repayment series of bonds. Thus, while the Federal repayment series would not be subject to the Borrowing Limitation Act (assuming no District "backstop" pledge), a local repayment series may.
5. Even if there is no District pledge supporting the GARVEE bonds, the District may be obliged to support the payment of the bond. The FHWA must approve the specific project for which GARVEE bonds may be issued, and although the FHWA funds may be paid either to the issuer or directly to the bond trustee, the FHWA payment is not a direct pledge to the bonds;<sup>3</sup> it is merely a portion of the FHWA payment to the District that the District is allowed to divert to debt service on the bonds.<sup>4</sup> To the extent that the District's repayments are not limited to FHWA receipts, these obligations would be subject to the Borrowing Limitation Act.

Under these five conditions, the District tax revenues could be used to pay or guarantee the payment of GARVEE bonds, and to the extent that District tax revenues support these obligations, the Borrowing Limitation Act would apply.

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<sup>3</sup> Technically, the District will be using FHWA funds to reimburse the debt-service costs, and the District retains the right to pay debt service with its own funds and use the FHWA funds elsewhere. The GARVEE program allows use of FHWA funds either to reimburse the District for debt service costs on a specific project or to use FHWA funds authorized for other projects.

<sup>4</sup> By law, tax-exempt bonds cannot include a direct or indirect Federal guarantee. Because "guarantee" is broadly defined to include a revenue stream (such as rent), GARVEE bonds would violate the prohibition but for the Federal legislation allowing FHWA funds to be used to support debt service.